

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : NO. 99-289-M
 :
 v. :
 :
 ALLEN S. STRATTON :

PRETRIAL DETENTION ORDER

AND NOW, this day of April, 1999 after an evidentiary hearing and argument of counsel for the government and the defendant, the Court FINDS that:

(a) the government has proven by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required; and

(b) that the government has proven by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of other persons and the community, as required by Title 18, United States Code, Section 3142(e).

I. Findings of Fact

The Court makes the following findings of fact:

This case is appropriate for detention under Title 18, United States Code, Section 3142(e) because:

A. Probable Cause And The Evidence In This Case

The Court makes the following findings of fact:

1. There is probable cause to believe that ALLEN S. STRATTON committed the following offenses:

A. On or about December 14, 1998, knowingly and intentionally distributing cocaine base ("crack") to Officer Terrence Flomo in or about 1311 Webster Street, Philadelphia Pennsylvania;

B. On or about December 14, 1998, knowingly and intentionally distributing cocaine base ("crack") to Officer Terrence Flomo on or about the 1300 block of Webster Street, Philadelphia Pennsylvania;

C. On or about December 15, 1998, knowingly and intentionally distributing cocaine base ("crack") to Officer Terrence Flomo on or about the 1300 block of Webster Street, Philadelphia, Pennsylvania;

D. On or about December 15, 1998, knowingly and intentionally possessing with intent to distribute approximately 6 grams of cocaine base ("crack") in or about 1313 Webster Street, Philadelphia, Pennsylvania;

E. On or about December 15, 1998, knowingly possessing a firearm, that is, a Smith & Wesson .38 caliber revolver, serial number 1K23897, in or about 1313 Webster Street, Philadelphia, Pennsylvania, in furtherance of a drug trafficking crime;

F. On or about December 15, 1998, in or about 1313 Webster Street, Philadelphia, Pennsylvania, knowingly possessing in or affecting interstate commerce a firearm, that is, a Smith & Wesson .38 caliber revolver, serial number 1K23897, after having been convicted in the Court of Common Pleas of

Philadelphia County of a crime punishable by imprisonment for a term exceeding one year.

2. The evidence in this case is strong and consists of eyewitness testimony of police officers.

3. The evidence shows that the defendant possessed a revolver while on probation for a state conviction for distributing and/or possessing with intent to distribute controlled substances, and after having been convicted of aggravated assault. Pictures found in STRATTON's residence at the time of his arrest suggest that he possessed many other weapons, as well.

4. The nature and strength of the evidence against the defendant demonstrates both that the defendant is a high risk not to appear and that he poses a danger to the community.

B. Penalties

1. Defendant, STRATTON, is charged with four violations of 21 U.S.C. § 841(a), a violation of 18 U.S.C. § 924(c)(1)(A)(i) and a violation of 18 U.S.C. § 922(g)(1). He faces a statutory maximum of 15 years minimum mandatory imprisonment (10 years for possession with intent to distribute more than 5 grams of crack; 5 years for possession of a firearm in furtherance of a drug trafficking crime) to life imprisonment, a \$10,250,000 fine, from 16 years to a lifetime of supervised release and a \$600 special assessment.

2. Based on STRATTON's prior record, the fact that he was in possession of more than 5 grams of crack, the fact that

defendant faces a mandatory consecutive term of 60 months for violation of 18 U.S.C. § 924(c), the fact that 1311 and 1313 Webster were within 1,000 feet of a school, and the fact that the defendant was on probation for a prior drug trafficking offense when the offenses in this case occurred, the defendant faces a likely guidelines incarceration range of 181 - 211 months. Accordingly, there is a significant incentive for the defendant to flee to avoid prosecution and incarceration.

C. Prior Criminal Record/Attendance At Court Proceedings

The defendant has a significant history of criminal convictions:

<u>Court No.</u>	<u>Charge</u>	<u>Sentence</u>	<u>Sentence</u>
CP9310-3149	Ag. assault Ethnic intimidation	Max. 2 yrs.	8/19/94
CP9511-0409	Mfg./Del./PWID CDS	5 yrs. prob.	5/8/96

STRATTON also received a pre-indictment probationary term for aggravated assault in 1993. STRATTON has two "failures to appear" in his history, on July 26, 1994 and on December 13, 1994. The record suggests that in each instance he was arrested on a bench warrant and brought before the Court of Common Pleas for disposition of his failure to appear, rather than voluntarily curing his failure to appear.

D. Ties To The Community

1. STRATTON reports having part time odd jobs. While STRATTON appears to have some family or social ties to the community, his lack of a stable address coupled with his sketchy

employment status suggest that these ties exert no compelling influence on him. The legislative history of the Comprehensive Crime Control Act of 1983 indicates that Congress found that community or family ties do not and should not weigh heavily in the risk of flight analysis. See Sen. Comm. on Judiciary, Comprehensive Crime Control Act of 1983, S. Rep. No. 98-225, 98th Cong., 1st Sess. 24, 25 (1983).

2. Certainly, any ties to the community in this instance have not served to prevent the defendant from endangering the community by dealing crack cocaine and possessing a firearm while on probation for a prior drug conviction and after having been convicted of aggravated assault charges. Where a defendant has violated the terms of his probation in so obvious and dangerous a fashion, the Court is very reluctant to let the defendant loose on the community again. The risk to the community is apparent, and defendant's ties to the community are irrelevant to this prong of the analysis under 18 U.S.C. §3142.

E. Rebuttable Presumption

There is a rebuttable presumption in favor of detention in this case, based on the charges under 21 U.S.C. § 841(a) and 18 U.S.C. 924(c). 18 U.S.C. § 3142(e).

II. Conclusions of Law

There is probable cause to believe the defendant was dealing crack cocaine and possessed a firearm while on probation for a previous drug distribution conviction. The case against the defendant is strong. Defendant's ties to the community are not

sufficient to prevent him from violating the law. The safety of the community is clearly jeopardized by those who possess firearms, not only in violation of the law but in violation of the terms of their probation. The facts of this case strongly demonstrate that the defendant was willing to conduct himself in obvious violation of a specific court order, i.e., the terms of his probation in the state system. There is a high risk that he will continue to conduct himself in this fashion despite the existence of a court order commanding him to do otherwise. The defendant faces years of incarceration in a federal penitentiary, including the possibility of 15 years minimum mandatory time, 10 for the crack distribution and 5 for possession of a firearm in furtherance of a drug trafficking crime, with a correspondingly high incentive to flee, if placed on bond or home detention with electronic monitoring.

Only 24 hour custody and supervision can ensure the appearance of this defendant and the safety of the community. The conditions of release enumerated in the detention statute, 18 U.S.C. §3142(c), are unlikely to ensure that the defendant will not flee or resume his criminal activity. The defendant should be detained without bond through the course of this case.

Therefore, it is ORDERED that:

1. the defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

a. the defendant be afforded reasonable opportunity for private consultation with counsel; and

b. on order of a Court of the United States, or on request of an attorney for the government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

BY THE COURT:

UNITED STATES MAGISTRATE JUDGE